

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

RAY WALDROP

PLAINTIFF

VS.

CIVIL NO. 4:92CV288-B-D

MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL

DEFENDANTS

OPINION

By consent of the parties, this §1983 lawsuit was tried by the undersigned United States Magistrate Judge on July 7 and August 17, 1994. Plaintiff, an inmate at the Mississippi Department of Corrections' Parchman facility, contends that he was denied access to the courts by the defendants, who refused to permit him sufficient time in the law library to prepare and file an amendment or supplement to his post-conviction application pending in the Mississippi Supreme Court.

Waldrop was convicted in Leake County of the manufacture of methamphetamine, and that conviction was affirmed by the Mississippi Supreme Court on May 17, 1989 (544 So.2d 834). Waldrop, while serving another sentence in a federal penitentiary, filed a post conviction application in the Mississippi Supreme Court on July 16, 1991, asserting ineffective assistance of counsel and a search and seizure issue. When Waldrop arrived at the Parchman facility he asked writ-writer Steven Williams to review the application and file an amended or supplemental application to

assert an issue concerning the habitual criminal portion of his indictment. Moreover, Waldrop was under the impression that his original application may not conform to the rules of the Mississippi Supreme Court and "that the court wouldn't hear that ...."

In Williams' opinion the original post conviction application was poorly drawn and required substantial revision. He testified Waldrop only asked him to revamp the existing document and denied plaintiff asked him to prepare an additional argument on the habitual criminal portion of the indictment. Williams stated the revision took an inordinate amount of his time because it involved "some very complicated issues, and it took a lot of work. It's probably one of the most hardest cases I've ever worked on. It took me several months to do." In late April 1992 Williams completed the revision, which contained only the search and seizure and ineffective assistance of counsel issues, and offered to send it to Waldrop's unit for his signature. Waldrop declined to sign it at the unit, but insisted that he would only sign it in the law library.

Although he had turned the matter over to a writ writer, Waldrop believed he needed to keep constant check on Williams to monitor the progress of his case. Waldrop testified that between December 1991 and May 1992 he completed numerous applications to visit the law library, wrote letters, filed grievances and asked

correctional officers to intercede in his behalf, all to no avail. After he was notified by Williams that his work was complete, Waldrop was not permitted to go to the law library until June 22 when he signed the Williams document. However, on June 17, 1992, the Mississippi Supreme Court denied the original application on the merits. A subsequent motion for en banc hearing was denied.

Plaintiff's allegation that he was denied access to the courts by the failure of defendants to grant him time at the library, without more, does not state a claim of constitutional deprivation. Oltarzewski v. Ruggiero, 830 F. 2d 137 (9th Cir. 1987). Plaintiff must prove that he missed deadlines for cases or had pending lawsuits dismissed for failure to prosecute due to the denial or restriction of the use of the law library. See Bounds v. Smith, 430 U.S. 817 (1977). Plaintiff has no constitutionally protected right to "browse" at the law library.

Waldrop expended considerable energy arguing that his inability to visit the law library allowed the statute of limitations to run on the filing of his amended application, believing that this amendment had to be filed prior to the three-year term set by MCA §99-39-5(2). However, this has no relevance to this case, since the original application tolled the statute as to the issues raised there.

While this court is concerned with inmates' inability to secure library time, this was not the basis of Waldrop's problems

here. No evidence was presented in this hearing to indicate that the filing of an amended application or that the ability to attend the law library on a regular basis would have made any difference in the outcome of the post-conviction proceeding. No new issues appeared in the amended application, and the search and seizure issue had already been reviewed by the appellate court on direct appeal. The writ writer's difficulty in completing the revision and Waldrop's own refusal to sign the amended application at his unit in late April were the operative reasons for the failure of the amendment to reach the Mississippi Supreme Court prior to their decision.

A final judgment for the defendants in accordance with this opinion will be entered.

This \_\_\_\_\_ day of September, 1994.

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UNITED STATES MAGISTRATE JUDGE